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%12.10.2006

Present: Mr.Rajesh Malhotra, Adv. for plaintiff
None for the defendant

+CS(OS)No.1997/1997
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1. Defendants have been proceeded ex-parte. Plaintiff has led ex-parte evidence.

2. I proceed to judgment.

3. Plaintiff states that it was having business dealings with defendant No.1 and was supplying PVC resins. Defendant No.1 ran up huge payments approximating Rs.2.4 crores. Plaintiff threatened discontinuation of supply. Defendants No.2 and 3, sister companies of defendant No.1 came to its rescue. Defendant No.3 created an equitable mortgage of property No.4/3, Kirti Nagar Industrial Area, New Delhi by depositing title deeds. Defendant No.2 hypothecate certain machinery belonging to it and installed at its factory at 38/4 KM, Delhi Rohtak Road, Jhakhoda, Bahadurgarh (Haryana). Therefore plaintiff continued business on credit. According to the plaintiff, principal sum outstanding as of 31.3.1997 was Rs.2,81,45,764.81. Interest @21% per annum from 17.1.1997 till 4.9.1997 is stated to be Rs. 37,59,792/-. Thus,

Signature Not Verified
Digitally Signed By:AMULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

plaintiff seeks recovery of Rs.3,19,05,556.81 together with pendente lite and post decretal interest @21% per annum.

4. Plaintiff has led evidence by means of an affidavit of Shri M.S.Ramachandran under whose signatures suit has been instituted and plaint has been signed and verified.

5. The witness has proved Ex.PW-1/1 being the certificate of registration of the plaintiff. He has proved board resolution dated 8.8.1996, Ex.PW-1/2 as per which Shri W.R. D'Souza, Vice President (Legal) was constituted as the general attorney of the plaintiff having power to institute and defendant suit and take all actions in relation thereto. The power in favour of Shri W.R. D'Souza empowered him to further delegate his powers to any executive of the company.

6. The witness has proved Ex.PW-1/3, the general power of attorney executed by and on behalf of the plaintiff company in favour of Shri W.R. D'Souza which includes the aforenoted powers, including the power of delegation.

7. Witness has proved Ex.PW-1/4, a power of attorney executed by Shri W.R. D'Souza empowering Shri M.S. Ramachandran to institute suits on behalf of the plaintiff, sign and verify the pleadings.

8. In view of the afore noted 4 documents duly proved, I am of the opinion that the suit has been filed by a duly authorized person and the plaint has been signed and verified on behalf of the plaintiff by a duly authorized person.

9. Ex.PW-1/4 (Collectively) running into 393 pages are various invoices proved by the witness showing delivery of consumable material to defendant No.1. The witness has proved Ex.PW-1/5 being the ledger account pertaining to the defendant No.1 maintained by the plaintiff showing that as of 31.3.1997 a sum of Rs.2,81,45,764.81 was due and payable by defendant No.1 to the plaintiff.

10. I eschew certain letters proved by the witness pertaining to the equitable mortgage and the hypothecation of machinery by defendants No.2 and 3 save and except to note Ex.PW-1/8 being an agreement between the plaintiff and defendant No.3 to which defendant No.1 is a party, pursuant whereto an equitable mortgage of property No.4/3, Kirti Nagar Industrial Area, New Delhi, by means of deposit of title deeds has been agreed to be created by defendant No.3. The witness has proved Ex.PW-1/9, original sale deed in favour of defendant No.3 pertaining to property No. 4/3, Kirti Nagar Industrial Area, New Delhi to prove

equitable mortgage by deposit of title deeds.

11. The witness has proved Ex.PW-1/11, being the deed of hypothecation dated 20.8.1996 executed by defendant No.2 in favour of plaintiff recording that the machine listed in the schedule stands hypothecated to the plaintiff.

12. The witness has proved Ex.PW-1/23 being a legal notice dated 11.7.1997 served by counsel for the plaintiff upon the defendants calling upon the defendants to pay Rs.2,81,45,764.81. Postal receipts evidencing transmission of Ex.PW-1/23 by registered post have been proved as Ex.PW-1/24. Certificates of posting evidencing dispatch of the three notices, three UPCs have been proved as Ex.PW-1/25.

13. The evidence on record establishes that defendant No.1 is indebted to the plaintiff in sum of Rs.2,81,45,764.81 as on 31.3.1997.

14. In the absence of any document evidencing that parties agreed to a particular rate of interest and in the absence of any evidence of market usage, I have no option but to hold that the interest payable by defendant No.1 to the plaintiff would be the one which was offered by scheduled banks on fixed deposits. I award interest @10% per annum.

15. I have awarded interest @10% per annum noting that scheduled banks were offering interest @11% when transaction took place between the parties. This interest was compounded over six months. As of today, interest offered is 8.5% per annum.

16. Holding as aforesaid, I pass a decree in favour of the plaintiff and against defendant No.1 in sum of Rs.2,81,45,764.81 together with interest @10% per annum effective from 1.4.1997 till date of suit. Pendente lite and future interest is also awarded at the same rate. I pass a decree in favour of the plaintiff and against defendant No.2 directing defendant No.2 by means of a mandatory injunction to hand over the hypothecated machinery as detailed in Ex.PW-1/11. I authorize the plaintiff to sell the machinery after notice to defendant No.2 by inviting bids through open process and to appropriate sale proceeds thereof to liquidate decree against defendant No.1.

17. Qua defendant No.3, I pass a preliminary decree declaring that the sum payable by defendant No.1 as afore decreed would be the sum payable by defendant No.3. I grant 6 months' time to defendant No.3 to clear the decretal amount and redeem the mortgage.

18. The suit stands disposed of but with liberty reserved to the plaintiff to apply for a final decree should defendant No.3 not redeem the mortgage within the period granted.

19. Costs shall follow.

October 12, 2006
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PRADEEP NANDRAJOG, J.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1997/1997

DCW LTD ..... Plaintiff
Through Mr. Rajesh Malhotra, Adv.

versus

GECO ENGINEERING CO & ORS ..... Defendants
Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **03.11.2008**

In the present suit under Order 34 of the Code of Civil Procedure, 1908, a preliminary decree was passed in favour of the plaintiff and against defendant No.3 on 12th October, 2006, in respect of property No.. 4/3, Kirti Nagar Industrial Area, New Delhi on account of dues payable by defendant No.1. Defendant No.3 was granted six months' time to clear the decretal amount and redeem the mortgage. Six months' time has lapsed but defendant Nos. 1 and 3 have not paid the decreetal amount and cleared the mortgage. The

defendants have been served by publication in I.A.No.8706/07, filed by the plaintiff under Order XXXIV Rule 5 of the Code of Civil Procedure.

The defendants have been proceeded ex-parte as they have failed to appear in spite of substituted service by publication.

In view of the facts stated above I.A.No.8706/07 is allowed and a decree in terms of Order XXXIV Rule 5 of the Code of Civil Procedure in respect of property No. 4/3, Kirti Nagar Industrial Area, New Delhi is passed in favour of the plaintiff and against the defendant No.3. The said property will be sold in accordance with law to pay dues of the plaintiff.

The application is accordingly disposed of.

Decree sheet will be drawn by the Registry.

SANJIV KHANNA,J

NOVEMBER 03, 2008
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